

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ZACKARIAH SCHAKEL
Claimant

APPEAL NO. 18A-UI-00787-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NOODLES & COMPANY
Employer

OC: 12/24/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Noodles & Company (employer) appealed a representative's January 11, 2018, decision (reference 01) that concluded Zackariah Schakel (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 9, 2018. The claimant participated personally. The employer participated by Peter Rondello, Area Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 14, 2015, as a part-time shift manager. The employer has a handbook but it is unknown whether the claimant signed for receipt of it. On unknown dates the employer talked to the claimant about cash policy and attendance violations.

On August 13, 2017, two hours prior to the start of his shift the claimant told the area general manager he would be absent due to transportation issues. On August 14, 2017, the area general manager told the claimant it was not worth it to come to work and he should call the area manager. She wished him the best and hoped things got better for him in the future. The area general manager did not tell the claimant why he was terminated. She did not tell the area manager about the conversations she had with the claimant. The area manager thought the claimant did not appear for work or notify the employer of his absence on August 13, 14, and 15, 2017.

The claimant filed for unemployment insurance benefits with an effective date of December 24, 2017. The employer provided written documents in lieu of participation in the fact-finding interview on January 10, 2018. The fact finder called Sebastian Cortes, the self-identified

representative, for rebuttal information but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. Neither the representative nor the employer responded to the message. The employer provided some documents for the fact finding interview. The documents do not identify the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 11, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs